



**Philip S. Shapiro**  
Senior Attorney  
Law and Government Affairs

Suite 706  
111 Washington Avenue  
Albany, New York 12210-2213  
Tel: 518-463-2555  
Fax: 518-463-5943  
E-Mail: psshapiro@att.com

March 15, 2002

Sent via E-mail, Hand Delivery, and/or US Mail

Mary L. Cottrell  
Secretary  
Department of Telecommunications and Energy  
Second Floor  
One South Station  
Boston, Massachusetts 02110

Re: DTE 02-15, Network Plus, Inc., Investigation

Dear Secretary Cottrell:

AT&T Communications of New England, Inc., (AT&T) submits this letter in lieu of a reply brief in the above-referenced proceeding. AT&T has received the initial presentations of two parties, XO Massachusetts, Inc. (XO) and the Attorney General (AG). In reply, AT&T generally agrees with the positions of XO and the AG that the Department of Telecommunications and Energy (DTE) should continue to establish guidelines for orderly and expeditious migrations of customers of firms that may cease operations with little notice.

Mass Migration Guidelines. The instant investigation was instituted primarily to consider and ameliorate the risk of service interruptions created by the insolvency of Network Plus, Inc., (NP). NP has a substantial customer base and many of its customers provide vital health and other services to the public. The public interest therefore requires that the Department implement strategies designed to ensure that, to the greatest extent possible, these customers will not experience a loss of service.

Subsequent events in NP's bankruptcy proceeding suggest that NP will be able to continue serving its customers until a purchaser can assume responsibility for NP's operations and facilities. For this reason, the immediate risk of service interruptions has been significantly reduced.

Because telecommunications is a capital-intensive business, a general weakness in demand for telecommunications services can jeopardize the financial capacity of more heavily leveraged companies. As XO correctly observes, NP's bankruptcy is occurring in the context of a general downturn in the telecommunications business cycle and there may be additional bankruptcies of new telecommunications carriers.<sup>1</sup> For this reason, there is considerable merit in XO's recommendation that the Department continue its efforts to adopt clear procedures to guide consumers and carriers in similar future circumstances.<sup>2</sup>

XO notes that in neighboring New York State, the Public Service Commission recently adopted mass migration guidelines that had been developed in a collaborative process by industry representatives.<sup>3</sup> Based upon its own experiences, XO recommends that the Department adopt the New York Mass Migration Guidelines as well.<sup>4</sup> We concur.

The prospect of migrating on a highly compressed schedule a large body of customers with individual, complicated demands for telecommunications services is daunting. Considerable efficiency is gained from the existence of an established, well-understood process for (1) informing customers and interested parties of an apparent need for a mass migration, (2) prescribing intervals for specific activities, and (3) coordinating the efforts of the various parties who play a role in facilitating such migrations.

As XO notes, the New York guidelines assure that all competitive telecommunications companies that may be interested in serving customers facing a loss of service will have an opportunity to compete for the business. Further, the guidelines define the role of the regulator in monitoring the migration process and providing swift resolution of any issues that may arise between carriers.<sup>5</sup>

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1 XO, p. 1.

2 As noted by XO and the AG on brief, the Department began formulating a general policy by its recent adoption of a requirement that carriers discontinuing operations in the Commonwealth must give 60 days written to the Department. XO, p. 2, fn. 2; AG, pp. 2-3; see: Broadview Investigation, DTE 02-14, Order, issued February 20, 2002, at 10-11.

3 NY PSC Case 00-C-0188, Migration of Customers Between Local Carriers, Order Adopting Mass Migration Guidelines, issued December 4, 2001, <http://www.dps.state.ny.us/fileroom/doc10880.pdf>.

4 XO, p. 2.

5 Id. For example, as explained at the February 25, 2002, hearing, high-capacity circuits leased from Verizon at wholesale to serve a retail customer can typically be re-used by the successor retail carrier to serve the same customer. Tr. 63-66. The Department should be unequivocal in directing Verizon to allow the re-use of such facilities in these circumstances and the Department should stand ready to immediately investigate any situation in which a successor carrier's request for such re-use was not accepted and promptly fulfilled.

Without question, adopting a set of procedures that will minimize, if not eliminate, the possibility of customers experiencing service outages is vital from the perspective of those customers. However, it is also vital to the Commonwealth's economy. Competition produces lower rates and greater innovation and enhances the Commonwealth's ability to attract and retain businesses and institutions. Since the firms that are experiencing bankruptcy are new competitive telecommunications carriers, public confidence in competition can be severely eroded if it is perceived that choosing service from such new carriers poses a risk of a significant service outage in the event that the carrier becomes insolvent. If the public believes that government will minimize the risk of such outages, competition will succeed.

Adoption by the Department of New York's mass migration guidelines, per se, has two virtues. First, the New York commission has had several occasions to invoke the guidelines and carriers and customers have found that the rules work quite well.

Second, since most carriers and some mid- to large-sized customers in New York are also present in the Massachusetts market, the common use by New York and Massachusetts of the same guidelines would contribute additional efficiency to all concerned where a firm serving customers in both states becomes bankrupt.<sup>6</sup>

Customer Notifications. The AG contends that in the event NP's operations will cease, NP should give its customers and the Department 60 days written notice, as required under the policy adopted recently in DTE 02-14.<sup>7</sup> AT&T agrees that the Department should uphold the 60-day notification policy. This interval is of sufficient length to ensure a transition of most customers to successor carriers, provided that special services facilities can be re-used where necessary.<sup>8</sup>

We further endorse the AG's recommendation that an exiting carrier provide Verizon information necessary to transfer its customers to new carriers.<sup>9</sup> We would, however, ask that it be understood that such information should only be used by Verizon in connection with its work as a wholesale service provider. In all other respects, customer-specific information should be made available to all interested retail carriers on a competitively neutral basis. Similarly, customer notifications should, as a general proposition, also be competitively neutral, directing customers seeking successor carriers to the Department's website and other locations where they may learn about the firms who are authorized to provide the retail services to which these customer may choose to subscribe.

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<sup>6</sup> In this regard, it should be noted that NP is sufficiently familiar with the New York guidelines as to believe that it is in compliance with them. Tr. 77.

<sup>7</sup> AG, pp. 1, 3.

<sup>8</sup> Tr. 64.

<sup>9</sup> AG, p. 3.

Migration Preferences. The AG urges that priority in migrations be given to transferring customers “that provide critical safety, health, and welfare services.”<sup>10</sup> As a general rule, AT&T agrees. However, in circumstances of highly compressed timeframes, priority should be given on the basis of services, rather than customers, per se.

Consider, for example, a hospital that subscribes to ten different telecommunications services but only requires four types to fulfill its mission-critical public safety commitments. In such a circumstance, migrating all ten services of this customer ahead of the services of other customers may cause the latter interruption or considerable inconvenience. The better approach would be to afford the old and new carriers the flexibility to ascertain from the hospital and other customers their own priorities as to which services must be migrated to meet public health and safety expectations and use that information in developing a hierarchy of migration preferences.

Respectfully submitted,

Philip S. Shapiro  
(Admitted *pro hac vice*)

cc: Paula Foley, Hearing Officer  
DTE 02-15 Service List

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<sup>10</sup> AG, p. 3.

Investigation by the Department of Telecommunications  
and Energy on its own Motion pursuant to G.L. c. 159,  
' ' 12 and 16, into the regulations, practices, equipment,  
appliances and service of Network Plus, Inc.

I hereby certify that I have this day caused to be served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding by e-mail, hand-delivery and/or first-class US mail.

Dated: Albany, New York  
March 15, 2002